

**INFORMATION SHEET**  
**DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING**  
**FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. U.S. ARMY**  
**CORPS OF ENGINEERS**

**DISTRICT OFFICE:** Saint Paul District

**FILE NUMBER:** MVP-2004-00749-RMG

**REGULATORY PROJECT MANAGER:** Rebecca M. Gruber **Date:** January 28, 2005

**PROJECT REVIEW/DETERMINATION COMPLETED:** **In the office (Y/N)** **N** **Date:**

**At the project site** **Y** **Date:** 9/9/04  
**(Y/N)**

**PROJECT LOCATION INFORMATION:**

State: Wisconsin

County: Ozaukee

Center coordinates of site by latitude & longitude coordinates:

Lat. 43.2293° Long. -87.9165° (NAD 27)

Approximate size of site/property (including uplands) in acres

52 acres

Name or waterway of watershed: Milwaukee River

Two unnamed wetlands (this determination)

Type of Aquatic Resource <sup>1</sup> :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands	X								
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

<sup>1</sup>Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors <sup>1</sup>	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?				X	
Is or would be used as habitat by other migratory birds that cross state lines?				X	
Is or would be used as habitat for endangered species?				X	
Is used to irrigate crops sold in interstate commerce?				X	

<sup>1</sup>Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

**TYPE OF DETERMINATION:**                      **Preliminary X   Or   Approved**

**ADDITIONAL INFORMATION SUPPORTING NJD** (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

Six wetland basins are present on the subject property. Of this total, two small depressional basins are the subject of this report sheet. These two basins have been characterized as fresh wet meadows; both dominated by reed canary grass.

The two isolated wetlands (W-4 and W-5) lie entirely within the NW ¼ of Section 20, Township 9N., Range 22E., Ozaukee County, Wisconsin. As such, the wetland boundaries lie entirely within the State of Wisconsin. Even though both these basins are within 50 feet of a “water of the United States,” a field visit to the site confirmed that there is no surface connection between these basins. In addition, the expanse of upland separating these basins from other “waters of the U.S.” on site is not considered an anthropogenic disturbance. For these reasons, W-4 and W-5 are considered intrastate, isolated wetlands.

These two basins are not, nor are they likely to be, used by interstate or foreign travelers for recreation, industry, or commerce. The wetlands lie on private property, without public access. In addition, the wetlands do not contain any fish or shellfish which could be taken and sold. For these reasons, no interstate commerce nexus to these two basins has been established.

As mentioned in the opening paragraph, four other wetland basins were identified on the subject property. These four basins display a surface connection to the Milwaukee River. As such, they are considered to be “waters of the United States,” and therefore fall within the regulatory jurisdiction of the Corps of Engineers pursuant to Section 404 of the Clean Water Act.